

CAUSE NO. CC-18-06905-D

JOE DISHNER, Individually and as Executor of	§	IN THE COUNTY COURT
The ESTATE OF RUTH ANNE MARDOCK,	§	
EMMA DISHNER and GEORGE DISHNER,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	AT LAW NO. _____
	§	
	§	
UHS OF TIMBERLAWN, INC. D/B/A	§	
TIMBERLAWN BEHAVIORAL HEALTH	§	
SYSTEM AND UNIVERSAL HEALTH	§	
SERVICES, INC.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION, MOTION FOR LEVEL THREE DISCOVERY
CONTROL PLAN, AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE COURT:

COME NOW Joe Dishner, Individually and as Executor of the Estate of Ruth Anne MarDock, Deceased, Emma Dishner, and George Dishner (collectively, "Plaintiffs") complaining of UHS of Timberlawn, Inc. d/b/a/ Timberlawn Behavioral Health System ("Timberlawn") and Universal Health Services, Inc. ("UHS") (collectively, "Defendants") and would respectfully show unto the Honorable Court the following:

**I.
INTRODUCTION**

Ruth Anne MarDock, M.D.



1. Ruth Anne MarDock, M.D. (“Dr. MarDock”) was a lifelong Dallas resident. She met Plaintiff Joe Dishner in her journalism class her senior year of high school. She eventually married Joe and remained married until the time of her death. They had two children together, Plaintiffs Emma Dishner and George Dishner, and raised them in Dallas.

2. Dr. MarDock graduated from Kimball High School in 1971, at the top of her class. She went on to attend the University of Texas. Dr. MarDock worked as a waitress in the famed Hole in the Wall bar in Austin. She graduated *Summa Cum Laude* and Phi Beta Kappa in 1977. She studied medicine at the University of Texas Health Science Center and decided to go into psychiatry during a trip to Paris, France. She pursued her psychiatry residency at Timberlawn Psychiatric Hospital. She returned to Timberlawn in 2003 as a staff psychiatrist until she became Timberlawn’s interim medical director prior to her death.

3. On June 30, 2016, a patient at Timberlawn attacked and killed Timberlawn’s interim medical director, “Dr. MarDock”.

4. The Timberlawn patient, identified as Tony Lee Cason, was arrested and charged with murder, but has been found incompetent to stand trial.

Tony Lee Cason



5. Dr. MarDock's death was the result of poor management, inadequate training and staffing, and corporate greed by Timberlawn and its parent corporation, United Health Services, Inc. ("UHS"). Timberlawn and its staff ultimately failed to protect the one person that loved the institution so much that she agreed to stay on as interim medical director of the facility at a time Timberlawn was a sinking ship weighted down by government audits, investigations, and fines.

II.

MOTION FOR LEVEL THREE DISCOVERY CONTROL PLAN

6. Plaintiffs hereby move to conduct discovery in accordance with a discovery control plan tailored to the circumstances of this specific suit. In the interest of judicial economy and equity, Plaintiffs move to conduct discovery by Order (Level Three) pursuant to Rule 190.4 of the Texas Rules of Civil Procedure. This is a multi-party complex case that requires the imposition of a Level 3 discovery control plan. Such a plan would provide all parties adequate time for oral depositions, interrogatories and other necessary stages of discovery. All discovery will be conducted pursuant to Rule 192 of the Texas Rules of Civil Procedure, which requires that all discovery be relevant to the subject matter of the pending action. More time is necessary in order to fairly and adequately prepare for an efficient trial of the case. Furthermore, Plaintiffs

request thirty (30) days from the filing of the last Defendant's Answer to this Petition to prepare a written proposal for a discovery control plan.

III. PARTIES

7. Plaintiff Joe Dishner is an individual residing in this District and is the spouse of Ruth Anne MarDock, deceased. Plaintiff Joe Dishner has been appointed as the Independent Executor of the Estate of Ruth Anne MarDock, deceased.

8. Plaintiff Emma Dishner is an individual residing in Texas and is the biological child of Ruth Anne MarDock, deceased.

9. Plaintiff George Dishner is an individual residing Texas and is the biological child of Ruth Anne MarDock, deceased.

10. Defendant UHS of Timberlawn, Inc., d/b/a/ Timberlawn Behavioral Health System, is a Texas corporation who may be served with citation and a copy of this petition via its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136.

11. Defendant Universal Health Services, Inc. is a Delaware corporation with its principal place of business located in King of Prussia, Pennsylvania. Defendant is registered to do and is doing business in the State of Texas and may be served with Summons and a copy of this Complaint by serving its registered agent in Texas: Corporation Services Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Defendant UHS owns and manages behavioral health facilities across the United States, including the following facilities including Timberlawn.

IV.
JURISDICTION AND VENUE

12. Venue is proper in Dallas County, Texas as all or a substantial part of the events or omissions giving rise to this action occurred in Dallas County. TEX. REV. CIV. PRAC. & REM. CODE § 15.002(a)(1).

13. This Court has jurisdiction over this action pursuant to Article V Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code. This Court has subject matter jurisdiction over all claims asserted in this action because they are common law and/or statutory causes of action existing under Texas law by which Plaintiffs seek damages that are within the jurisdictional limits of this Court. This Court has personal jurisdiction over Defendants because Timberlawn is a Texas company that has committed torts in Dallas County, Texas and UHS has committed torts in Dallas County, Texas.

14. All conditions precedent to the bringing of this action have been met.

V.
FACTUAL BACKGROUND

15. Timberlawn is owned, operated, and managed by United Health Services, Inc. (“UHS”) which operates as a publicly-traded, for-profit company. UHS has come under public scrutiny for its focus on financial gain rather than quality patient care and staff safety at facilities like and including Timberlawn:¹

¹ See <http://uhsbehindcloseddoors.org/>

UHS BEHIND CLOSED DOORS THE HIDDEN HARM OF MAXIMIZING PROFITS

FEDERAL PROBE

PATIENT ABUSE

UNSAFE STAFFING

NEWSROOM

UHS' Inadequate Staffing, Supervision, Policies and Procedures, and Other Systemic Failures at Timberlawn

16. Indeed, the problems that have plagued UHS at its facilities have persisted at Timberlawn for years.



17. In 2013, UHS's Timberlawn Facility was fined \$165,000 for supervisory breakdowns that led to patient violence.

18. In December 2014, a suicidal patient was left alone and hanged herself on a doorknob that Timberlawn knew was dangerous but did nothing to remedy.

19. In February 2015, federal investigators began a series of inspections at UHS's Timberlawn Facility and threatened to cut off federal funding if it did not come into compliance

with patient safety, staffing, and other guidelines.

20. In March 2015, a ten-year-old girl patient was assaulted by other patients. During the assault, the unit reportedly had just one mental health technician for 14 girls. All assailants required 15-minute checks, and seven of them were monitored as assault risks. A worker reportedly told inspectors that staffing levels were “unsafe” that day. Another acknowledged that the hospital “did not have enough staff.” The incident, reportedly, was not investigated. In addition, while the 10-year-old girl was at the general hospital rather than on Timberlawn property, the staff continued to record her as sleeping in the unit or interacting with other patients.

21. In May 2015, Dallas police went to the Timberlawn Facility after a female patient alleged that a male patient had forced her to touch his genitals and raped her. The male patient reportedly told inspectors that the two “had intercourse” and that it was “very easy” to go between patient rooms unnoticed by the staff. An external investigation determined that, on the night of the incident, the unit had too many patients. CMS said in records that the overcrowding had “compromised the provision of care that meets the patients’ psychomedical and psychosocial needs.”

22. Later in 2015, Medicare regulators stripped Timberlawn of federal funding and the State of Texas fined Timberlawn a record \$1 million dollars and ordered it to surrender its license.

23. On June 30, 2016, while Timberlawn was still fighting the \$1 million fine, Timberlawn’s acting interim medical director, Dr. Ruth Anne MarDock, was killed by a patient who was not sufficiently monitored by Timberlawn staff.

24. Dr. MarDock's preventable murder did not compel any changes at Timberlawn, however, and the safety and staffing issues continued.

25. In October 2017, a thirteen-year-old girl was raped by another patient at Timberlawn. Inspectors found that on the night of the rape, there was just one mental health aide to watch 16 kids and the 17-year-old boy slipped into the girl's room unnoticed. The child was placed in a room next to the 17-year-old boy despite the fact that a doctor had warned the boy needed to be watched for sexual aggression.

26. Finally, On January 18, 2018, Timberlawn announced that it was voluntarily shutting down the facility just a week *after state officials threatened (again) to shut down the century-old treatment center because it was too dangerous* and fined it \$600,000.00.²



January 18, 2018

Dear Fellow Timberlawn Employees,

Since the time we made the decision in late December 2017, we have been carefully taking steps to prepare for closure. We also wanted to complete the recent survey process in order to close the facility in good standing with the Medicare program. Timberlawn notified both CMS and the Texas Health & Human Services Commission of our intent to close the facility during the re-survey which took place last week. The re-survey was concluded on Wednesday, January 10, but the official results have not yet been

3

Timberlawn's Inadequate Staffing, Safety, Supervision, and Management at Timberlawn Caused the Death of Ruth Anne MarDock

27. Dr. MarDock was the interim medical director at Timberlawn at the time of the attack and was acting in her role as interim medical director at the time of the attack. As such, Dr. MarDock, who was also a psychiatrist at Timberlawn, was an employee of Timberlawn at the time of the attack.

² <https://www.dallasnews.com/news/investigations/2018/01/18/dmn-investigates-troubled-timberlawn-psychiatric-hospital-closing-before-state-can-shut>

³ <https://www.documentcloud.org/documents/4355582-Timberlawn-Closure-Letter-1-18-2018.html#document/p1>

28. Timberlawn failed to provide Dr. MarDock with worker's compensation and as such, was a non-subscriber under Texas law.

29. Around 12:54 p.m. on June 30, 2016, Dr. MarDock was killed when a patient tackled her to the floor, hitting her head so hard that she ultimately died from the injury.

VI.

WRONGFUL DEATH AND SURVIVAL CLAIMS

30. Joe Dishner brings his individual claims by and for the benefit of all parties entitled to bring such claims pursuant to the Wrongful Death Act, Texas Civil Practice and Remedies Code 71.001, *et seq.*

31. Joe Dishner was the legal spouse of Ruth Anne MarDock at the time of the incident and has been appointed as the Independent Executor of her Estate.

32. Emma Dishner and George Dishner are the biological children of Ruth Anne MarDock and are statutory wrongful death beneficiaries. TEX. CIV. PRAC. & REM. Code § 71.004.

VII.

CAUSES OF ACTION

A. UHS

1. PREMISES LIABILITY

33. Plaintiffs repeat and re-allege all foregoing allegations into this cause of action.

34. Dr. MarDock was an invitee on a premises controlled by Defendant UHS and as such, Defendant UHS owed Dr. MarDock a duty of ordinary care to keep the premises in a reasonably safe condition.

35. At the time, Defendant UHS was a possessor of the premises.

36. A condition on the premises posed an unreasonable risk of harm.

37. Alternatively, Defendant UHS created a dangerous condition on the premises.

38. Defendant UHS knew or reasonably should have known of the danger.

39. Defendant UHS breached its duty of ordinary care by either (1) failing to adequately warn Dr. MarDock of the condition, or (2) failing to make the condition reasonably safe.

40. Defendant UHS's breach was a proximate cause of the injuries to and death of Dr. MarDock.

2. NEGLIGENCE

41. Plaintiffs repeat and re-allege all foregoing allegations into this cause of action.

42. Defendant UHS owed Dr. MarDock a duty to provide her with a safe work environment, including one that had reasonable staffing, safety, supervision, and management.

43. Defendant breached its duty to Dr. MarDock by failing to provide a safe work environment.

44. Defendant's breach was a proximate and but-for cause of damages, including the injuries to and death of Dr. MarDock.

B. TIMBERLAWN

1. NEGLIGENCE

45. Plaintiffs repeat and re-allege all foregoing allegations into this cause of action.

46. Defendant owed Dr. MarDock a duty to provide her with a safe work environment, including one that had reasonable staffing, safety, supervision, and management.

47. Defendant breached its duty to Ruth Anne MarDock by failing to provide a safe work environment.

48. Defendant's breach was a proximate and but-for cause of damages, including the injuries to and death of Ruth Anne MarDock.

49. Alternatively, at all times relevant hereto, the nurses, techs, social workers, staff and other health care providers at Timberlawn were acting in the course and scope and in furtherance of their employment as nurses, techs, social workers, staff and other health care providers at Timberlawn, and as such, Timberlawn is vicariously liable for the negligence of the nurses, techs, social workers, staff and other health care providers at Timberlawn. The nurses, techs, social workers, staff and other health care providers at Timberlawn were negligent and grossly negligent in that their conduct fell below the standard of care for such nurses, techs, social workers, staff and other health care providers in the same or similar circumstances, including but not limited to, the following particulars:

- a. Failing to notify Dr. MarDock of patient's anger directed directly towards her;
- b. Failing to notify the charge nurse or RN assigned to care for the patient regarding the patient's anger directed towards Dr. MarDock;
- c. Failing to notify all staff of the patient's potential assaultive behavior and need to be removed from the environment where Dr. MarDock was seeing patients;
- d. Failing to take responsible, proactive measures to ensure the safety and security of Dr. MarDock by effectively responding to and minimizing potential injury to Dr. MarDock;
- e. Failing to provide adequate trained staff to safeguard Dr. MarDock, other patients and staff;

- f. Failing to train staff in safety practices, including ensuring that a social worker would inform the staff nurse or charge nurse of the patient's history of potentially assaultive behavior and prior need to be in restraints.
- g. Failing to have proper training and awareness in safety education and basic safety standards in an acute psychiatric unit;
- h. Failing to provide an adequate report that would alert all staff, including Dr. MarDock, to the high acuity and potentially assaultive behavior of a patient with a history of assaultive behavior;
- i. Failing to provide adequate resources e.g. security when dealing with an assaultive patient;
- j. Failing to follow safety training and skills in the management of a potentially assaultive patient;
- k. Failing to follow OSHA, Texas Administrative Codes, CMS, Joint Commission, ANA Scope and Standards of Psychiatric- Mental Health Nursing Practice and Safe Management;
- l. Failing to notify an M.D. or the charge nurse to obtain an order for assaultive precautions when the patient's behavior behavior/mood necessitates a more intensive level of observation;
- m. Failing to provide adequate staff based on their own standards and due to increased acuity level prior to the time of the incident;
- n. Failing to provide a safe, secure workplace environment;
- o. Failing to follow Joint Commission's National Safety Goal and Provision of Care standard PCC 02.02.01 element of performance which requires that: The

organization's process for hand off communication provides for the opportunity for discussion between the giver and receiver of patient information;

- p. Failing to follow Timberlawn's own policies and procedures regarding staff and patient safety;
- q. Failing to develop and implement appropriate policies and procedures regarding staff and patient safety; and
- r. Failing to adequately train staff related to staff and patient safety.

50. The above-described acts and/or omissions were singularly and/or severally a proximate cause of the occurrence in question and the resulting tragic, yet preventable, injuries and damages to Plaintiffs.

51. Timberlawn is liable in its individual capacity and through the doctrines of agency, apparent agency, agency by estoppel, borrowed servant, *respondeat superior* and/or vicarious liability for the acts and/or omissions of its agents, employees, and/or representatives. At all relevant times, employees, agents or servants of Timberlawn were acting in the course and scope of their employment and/or agency and in furtherance of their employer's or principal's businesses. Therefore, Timberlawn is directly responsible for the actions of its employees, servants or agents working for it under the doctrine of agency, borrowed servant, and *respondeat superior*.

2. PREMISES LIABILITY

52. Plaintiffs repeat and re-allege all foregoing allegations into this cause of action.

53. Dr. MarDock was an invitee on a premises controlled by Defendant Timberlawn and as such, Defendant Timberlawn owed Ruth Anne MarDock a duty of ordinary care to keep

the premises in a reasonably safe condition.

54. At the time, Defendant Timberlawn was a possessor of the premises.

55. A condition on the premises posed an unreasonable risk of harm.

56. Alternatively, Defendant Timberlawn created a dangerous condition on the premises.

57. Defendant Timberlawn knew or reasonably should have known of the danger.

58. Defendant Timberlawn breached its duty of ordinary care by either (1) failing to adequately warn Dr. MarDock of the condition, or (2) failing to make the condition reasonably safe.

59. Defendant Timberlawn's breach was a proximate cause of the injuries to and death of Dr. MarDock.

VIII. **GROSS NEGLIGENCE**

60. Plaintiffs incorporate the above paragraphs by reference as if set forth herein verbatim.

61. Plaintiffs aver that the specific conduct complained of in the above counts, and displayed by Defendants were substantially more than ordinary carelessness, inadvertence, or laxity, but rather specifically consisted of gross negligence and malice, as those terms are defined by law. Plaintiffs further show that the negligent acts and/or omissions of the Defendants as set out above constitutes such an entire want of care as to indicate that the acts and/or omissions in question were the result of conscious indifference to the rights, welfare and/or safety of Plaintiffs and/or constituted gross negligence, which was the proximate cause of Plaintiffs' injuries. In the alternative, Plaintiffs would further contend that the acts and/or omissions of Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential

harm to Dr. MarDock, and although Defendants had actual, subjective awareness of the risks involved, it nevertheless proceeded with conscious indifference to the rights, safety and/or welfare of Dr. MarDock. Such acts were a proximate cause of Plaintiffs' injuries.

62. Further, Defendants' conduct caused serious bodily injury to Dr. MarDock. With respect to the nature of Defendants' conduct or to circumstances surrounding their conduct, Defendants were aware of the nature of their conduct or that the circumstances existed. Alternatively, Defendants were aware that their conduct was reasonably certain to cause serious bodily injury to Dr. MarDock. As such, the so-called damage "caps" on exemplary damages set forth in section 41.008(b) of the Texas Civil Practice and Remedies Code are abrogated pursuant to section 41.008(c)(14). Thus, Plaintiffs seek unlimited exemplary damages against Defendants.

IX. **DAMAGES**

63. As a direct and proximate result of the acts and/or omissions of the Defendants, as set forth herein above, Plaintiffs are, individually as survival and wrongful death beneficiaries, entitled to recover the following elements of damage:

- past and future loss of advice that they would have received from Ruth Anne MarDock;
- past and future loss of counsel that they would have received from Ruth Anne MarDock;
- loss of reasonable contributions of a pecuniary nature that they would have received from Ruth Anne MarDock, including lost earning capacity, advice, counsel, services, care, maintenance, and support;
- loss of inheritance;
- loss of earnings and earning capacity of Ruth Anne MarDock;
- past and future loss of companionship and society of Ruth Anne MarDock;
- past and future mental anguish related to the loss of Ruth Anne MarDock; and

- Ruth Anne MarDock's pain and mental anguish, medical expenses, and funeral expenses.

X.
INTEREST

64. Plaintiffs seek recovery for pre-judgment and post-judgment interest at the highest legal rate allowed by law.

XI.
REQUEST FOR DISCLOSURES

65. Pursuant to Texas Rule of Civil Procedure 194, Defendants are requested to disclose the information and material described in Rule 194.2. The written responses to the above requests for disclosure should conform to Rule 194.3 and the materials, documents, and/or copies of the same should be produced in compliance with Rule 194.4.

XII.
PRAYER

66. Plaintiffs requests that Defendants be cited to appear and answer, and that this case be tried, after which Plaintiffs recover:

- a. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages indicated above;
- b. Exemplary damages;
- c. Pre-judgment and post-judgment interest at the maximum amount allowed by law on all elements of applicable damages claimed herein;
- d. Costs of suit;
- e. Such other and further relief, both general and specific, at law or in equity, to which Plaintiffs are entitled.

Dated: December 13, 2018

Respectfully submitted,

/s/ R. Dean Gresham

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